

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
) MB Docket No. 16-357
Entercom License, LLC) Facility ID No. 65483
Applications for Renewal of License for Station) File Nos. BRH-20050728AUU
KDND(FM), Sacramento, California) and BRH-20130730ANM

To: Chief Administrative Law Judge

**REPLY TO
ENFORCEMENT BUREAU'S OPPOSITION TO
PETITION TO ENLARGE ISSUES
*[URGENT: EXPEDITED ACTION REQUIRED]***

Media Action Center and Sue Wilson, by their attorney, here reply to the Opposition submitted by the Enforcement Bureau (EB) on January 18, 2017.¹ Our petition sought issues against Entercom's five other stations in its Sacramento cluster,² stations where the identical lapses of oversight and control were manifest. To negate these issues, the Enforcement Bureau apparently connived with the Media Bureau to arrange for the grants of the five station renewals and then, lo and behold, on the same day as the renewal grants, triumphantly declared the issues moot.

The issues are not moot if, during the statutory period for reconsideration, the presiding judge stays the effect of the renewal actions, pending the outcome of this proceeding. Petitioners request such a stay. The stay must be issued before the

¹ We reserve the separate opportunity to reply to an Opposition submitted later by Entercom.

² KUDL (FM) , Facility ID 57889; KIFM (AM), Facility ID 67848; KKDO (FM), Facility ID 6810; KRXQ (FM) Facility ID 20354; KSEG (FM), Facility ID11281

renewals become final actions, cutting off Commission review of activities during the renewal term. To be clear, we are seeking a stay, not a reconsideration. (Procedurally a reconsideration would not lie with respect to these applications, whether at the initiative of the Chief ALJ or ourselves.)

The Presiding Judge Has Authority to Stay the Renewal Grants

The Enforcement Bureau staff must be very pleased with themselves to have concocted this method, with the Media Bureau, to withhold from the presiding judge any authority to explore these crucial matters.³ However, the judge's authority is not so easily eviscerated. In a recent case, the Enforcement Bureau petitioned the same judge to add issues, as to whether FM radio construction permits granted by the Broadcast Bureau in the 1980's should be nullified, because their grant was inconsistent with the holding of subsequently evolved case law. The petition was granted and the issues added.⁴ If the judge has power, according to the Enforcement Bureau, to go back into the processing line thirty years later and overturn the issuance of construction permits, then here the judge certainly has power to stay the effect of these renewals, until the critical relevant issues, as raised by petitioners, are addressed.

3 The renewals had lay dormant in pending status since the applications were filed in July, 2013, and indeed three of the stations also had previous renewals still pending from July, 2005, more than a decade ago, all now suddenly resolved, *In re: Entercom Sacramento Licenses, LLC*, Letter (M.B.), released on January 18, 2017.

4 William L. Zawila, FCC 16M-01, released on January 12, 2016.

The Bureau, in Disputing the Unity of the Sacramento Cluster, Ignores the Evidence We Presented.

We show that at the jury trial in Sacramento Superior Court, the Special Verdict, Attachment D, found Entercom Communications Corp. not negligent (Question 3). It found that Entercom Sacramento Entercom was negligent (Question 2). The jury was not asked, and did not opine as to whether Station KDND was negligent. Entercom Sacramento is a legal entity. KDND is not. The EB airbrushes this distinction by assuming that the verdict did not identify the source of wrongdoing where the jury clearly said where it was located.

While it is relevant that all stations in the cluster used the same offices, the same computerized public file (Attachment A), and the same lunch room where Jennifer Strange was fatally injured (Attachment B), our claims centrally relied on the admissions in the Declaration of John D. Geary in support of motion for summary judgment, Attachment C. The Declaration clearly indicates that he and Robin Pechota Ray were the only executives in Entercom Sacramento having responsibilities for programs or contests across the station cluster. This fact was absurdly dismissed by EB (p. 3) almost as a fortuitous fact that the Sacramento stations “had two common employees.”

An issue already designated is whether Entercom failed to properly train and supervise the Station KDND (FM) staff and the contest to ensure the safety of the contestants. The Geary Declaration pinpoints the exact locus of those failures with

devastating precision.

I did not see the rules for the Contest that were prepared by Robin Pechota Ray (Depo Ex. 9) until after I learned of the death of Ms. Strange. Also, as Vice President and Market Manager of Entercom Sacramento, LLC, I was not involved in the training of employees (including the promotions directors) in the General Contest Guidelines or in the procedures to be followed in connection with contests. (p. 5, ll. 20-24).

Robin Pechota Ray had responsibility for overseeing the planning and approval of contests, including the Hold Your Wee for a Wii Contest, for preparing rules for contests, for monitoring contests and for complying with the General Contest Guidelines. (4 at ll. 17-19)

I was advised by Robin Ray after the hold your Wee for a Wii Contest occurred that she did not provide rules for the Contest or submit the Contest to the Legal Department for review; hence no employee (or officer, director or a managing agent) of Entercom Communications Corp. had any involvement with the contest. (4 at 20-22).

These sworn admissions of the good soldier may have been effective at trial to insulate the parent company back in Pennsylvania. But they also locate the vacuum of oversight and control that must concern the Commission here, where it actually was in the cluster management.⁵

According to EB, petitioners are assuming that, simply because KDND shared a common license with others in Sacramento, the alleged failures at KDND existed at the other stations (p. 4). To the contrary, we have submitted probative evidence that the jury's verdict was soundly based on the known fact of an oversight failure in the offices of the only two people at Entercom Sacramento charged with promotions,

⁵ And see Decl. At 2 ll. 26 to 3 ll. 1-3, confirming that defendants Steve Weed, Robin Pechota Ray and Elizabeth Baghaei were employees, not of Entercom, but of Entercom Sacramento, LLC.

contests, and other FCC compliance matters. Here the HDO put it this way:

The Trial jury's verdict that Entercom negligently caused the death of a member of the Station listening audience appears to be prima facie evidence that Entercom's conduct was contrary to the public interest duty and a breach of Entercom's core obligations as a public trustee. (HDO at para. 33)

But the HDO had generally accepted Entercom's misleading claim “that, at the Trial, licensee parent Entercom was not found negligent by the jury.” HDO, para. 13.

“According to Entercom, 'the matter ended there.'” *Id.* Issues are needed to set aside this deception, and to place responsibility where the jury placed it and where the vacuum of oversight and control occurred in actual fact – at the Entercom Sacramento radio cluster management level.

Enforcement Bureau's Opposition Presents No Credible Argument Against the Addition of a Character Issue.

The Enforcement Bureau's approach to the basic character qualification issue is hyper technical, legalistic, and unpersuasive. Our request, Petition pp. 10 – 13, is characterized as an untimely request for reconsideration of the HDO. But the Commission's action, by failing to consider the special verdict judgment against Entercom Sacramento, LLC, was factually flawed. That, taken together with the shocking and reprehensible failure to warn other contestants, HDO paras. 58 – 61, make the character issue inescapable. Every petition to enlarge issues, based on new fact and new argument, stands in contrast with the issues not added originally in the same case. That does not render such petition a “reconsideration.”

The Enforcement Bureau notes that character issues are properly added for “misconduct which violates the Communications Act or a Commission rule or policy. . . .” [Opp. p. 6, quoting Character Policy Statement]. The Enforcement Bureau disputes that we have here any violation of the Act or the rules, *Id.* May we suggest: A. The duty to know, observe and enforce FCC contest rules; B. The duty to oversee what goes out over licensed station air; C. The duty to further and protect public health and safety; D. The duty to inculcate in employees the most basic precepts of licensee responsibility and conduct; E. The duty to mitigate damage from a ratings grabbing, but potentially life threatening stunt.

Our request for a character qualification issue compliments, but stands apart from our request for issues across the full Sacramento cluster. That is, the presiding judge could decide to add renewal issues across the other five stations in the cluster, but not add the character issue. Or the judge could decide to add the character issue, while limiting it to KDND (FM). We believe the *prima facie* case is made to add both issues.

A Reporting Issue is Needed.

In a reversal of the normal case where a winning party offers settlement so that judgment in its favor may become final, here Entercom paid off of the family of the decedent contestant, winners of a \$16 million judgment, to close the matter and, importantly, to withdraw their complaint to the FCC based on the same conduct. The

Enforcement Bureau claims that the complaint was neither a petition to deny nor an informal objection, so the payment did not trigger the reporting obligation of Sec. 73.3588 of the Rules.⁶ EB forgets that KDND (FM) had its renewals pending at the time and the complaint, by a party with obvious standing, could of itself have led to a hearing, and would have been treated at least as an informal objection.

Enforcement Bureau's Role is Inappropriate.

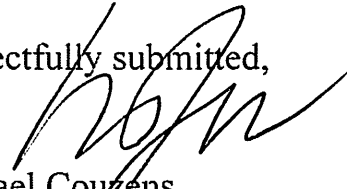
Entercom is represented in this hearing case by at least five excellent attorneys, apparently with client instruction to litigate a defense of the case to the ends of the earth. Why, it could be asked, does the Enforcement Bureau find any need of its own to leap to the defense of this party? In the broadcast area, the Bureau has been aggressive in levying stiff fines against small, rural TV and radio stations based on the hyper technicalities of late or missing periodic reporting. But when it comes to a hundred-station publicly traded conglomerate, the Bureau is only here to be helpful. Especially odious was the manner that the Enforcement Bureau worked with the Media Bureau behind the scenes in a cynical end-run to thwart the relief we request.

Petitioners do not believe that any licensee is too big to regulate or too big to punish, even for egregious misconduct. Only the presiding judge can uphold the public interest, where the interest on both sides of the table in this matter appear have started working as a tag team.

⁶ As Entercom had hoped with its pay off, the complaint is not part of the record here, and petitioners do not have a copy of it.

WHEREFORE, and for the reasons stated in our petition, it is respectfully requested that the issues sought be added in this hearing.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Michael Couzens', written over the typed name.

Michael Couzens,
*Attorney for Media Action Center
and Sue Wilson.*

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CERTIFICATE OF SERVICE

I, Michael Couzens, certify that on January 26, 2017, the foregoing Reply to Enforcement Bureau's Opposition to Motion to Enlarge Issues was served by e-mail to the following:

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